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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,066	03/15/2004	Jaime E. Garcia	JK01257	1246
28268	7590	02/28/2006		
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
			EXAMINER PETERSON, KENNETH E	
			ART UNIT 3724	PAPER NUMBER

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/801,066	Applicant(s) GARCIA ET AL.	
	Examiner Kenneth E. Peterson	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 2-21 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 2-21 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 03 Feb 06.

Applicant indicated that claims 2,5,7,8 and 12 read on the elected species A.

However, claim 2 clearly is directed to the Species of figure 9. Elected species A has no guard.

Claim 5 is directed to the profiled knife of figure 14. Elected Species A has no profile.

Claim 7, with its horizontal and vertical adjusters is drawn to the species of figure 4. Elected species A does not have these features. Claims 8 and 12 depend from 7.

Accordingly, only claims 1,22 and 24 will be examined.

2. Claim 1 is objected to for incongruent titling. The title of the claim suggests that the claimed subject matter is just the riving knife, but the body of the claims positively recites a connection of the riving knife to the saw assembly.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1,22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang '144, who shows a riving knife having 1st and 2nd receivers (82), 1st and 2nd adaptors (50,50') and a fastener (40, etc.).

Examiner notes that all modern tables saws like Huang's have a height adjustable blade.

In regards to claim 24, the slots (82) are angled at 90 degrees to the table top.

5. Claims 1 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sommerville '370, who shows a riving knife having 1st and 2nd receivers (134,134), 1st and 2nd adaptors (130,130) and a fastener (164, etc.).

Examiner notes that all modern tables saws like Sommerville's have a height adjustable blade.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1,22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of the rejections above.


If for some reason, Applicant were to argue that Sommerville's or Huang's saw blade was not height adjustable, Examiner takes Official Notice that such is ubiquitous. It would have been obvious to one of ordinary skill in the art to have modified either Huang or Sommerville by making the blade height adjustable, as is well known, in order to adjust for different thicknesses of workpieces.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 571-272-4512. The examiner can normally be reached Mon-Thurs, 7:30AM-5PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KP
February 15, 2006


**KENNETH E. PETERSON
PRIMARY EXAMINER**